



## NATIONAL LOW INCOME HOUSING COALITION

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Regulations Division  
Office of General Counsel  
U.S. Department of Housing and Urban Development  
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Via [regulations.gov](https://www.regulations.gov)

Re: FR-6287-P-01  
30-Day Notification Requirement Prior to Termination of Lease for  
Nonpayment of Rent

The National Low Income Housing Coalition (NLIHC) is dedicated solely to achieving racially and socially equitable public policy that ensures people with the lowest incomes have quality homes that are accessible and affordable in communities of their choice. Our members include state and local housing coalitions, residents of public and assisted housing, nonprofit housing providers, homeless service providers, fair housing organizations, researchers, public housing agencies, private developers and property owners, local and state government agencies, faith-based organizations, and concerned citizens. While our members include the spectrum of housing interests, we do not represent any segment of the housing industry. Rather, we focus on policy and funding improvements for extremely low-income people who receive and those who need federal housing assistance.

NLIHC welcomes the proposed rule, which has the potential to minimize evictions due to a household's temporary limited ability to pay rent for a public housing or PBRA-assisted unit. If implemented, hasty and perhaps unnecessary or inappropriate initiation of formal judicial eviction proceedings can be avoided, thereby preventing housing instability and perhaps even homelessness. However, as proposed, there is one major deficiency that must be corrected if HUD is to comply with its mission, and NLIHC also urges HUD to adopt ten additional recommendations that will greatly improve a final rule's effectiveness at preventing unnecessary evictions. NLIHC signed on to the Housing Justice Network's comment letter, drafted by the National Housing Law Project. We reiterate some of those comments here for emphasis and add a number of our own recommendations.

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## Vouchers Must Be Included

The proposed rule does not include tenants assisted with Housing Choice Vouchers (HCVs) and Project-Based Vouchers (PBVs), including tenants in former public housing developments that have converted to PBVs under the Rental Assistance Demonstration (RAD). The National Housing Law Project's comments in response to the proposed rule presents cogent reasoning demonstrating that HUD has the statutory and regulatory authority to include the voucher programs in a final 30-day rule.

## Ten Additional Recommendations

1. As HUD rightly acknowledges in the preamble to the proposed rule, the CARES Act 30-day notice to vacate requirement for non-payment of rent is still in effect for all CARES Act covered properties, which include those assisted with vouchers. The final rule must include text prominently and clearly stating that the CARES Act 30-day notice requirement remains in effect, including for voucher-assisted tenants. This addition would not be superfluous. On the contrary, such text is a crucial regulatory reminder because, as many legal services attorneys report, there are many instances of owners and judges demonstrating that they are not aware that this CARES Act provision is still in force.
2. The final rule must clearly state that "rent" owed does not include other arrearages charges, such as fines for late rent payments. In addition, the final rule must clearly state that "rent" does not include other fees such as attorneys' fees and processing fees.
3. The required notice should inform residents about any available state, local, or charitable rental assistance programs, anti-eviction resources, right to counsel laws, and free legal assistance.
4. The preamble to the proposed rule merely "recommends" that PHAs and owners of PBRA-assisted properties enter into repayment agreements. We urge HUD to **require** PHAs and owners to enter into repayment agreements.

Merely requiring a 30-day notice, while helpful to tenants in temporary financial distress, might simply forestall the inevitable if a PHA or owner is too aggressive in moving toward eviction. The 30-day notice is not likely to provide sufficient time for extremely low-income households to cure the amount of back rent owed. The subsequent eviction could lead to a household's housing instability, and at worst to homelessness. The proposed rule requires the 30-day notice to provide instructions on how a tenant can cure the non-payment of rent. A required repayment agreement provides a reasonable means for an extremely low-income household in economic distress to actually cure the nonpayment of rent.

If HUD does not require a reasonable repayment agreement, HUD would be acting contrary to its goal under the "National Housing Act of 1949" of "a decent home and suitable living environment for every American family – especially for lower-income families." As HUD states in the preamble, "Preventable evictions for non-payment of rent in HUD-assisted housing hinder the Department's work and frustrate HUD's

programmatic efficiency. Accordingly, by reducing preventable evictions, this proposed rule would advance HUD's statutory purposes." Requiring reasonable repayment agreements will help to prevent evictions and therefore reduce hindrances to the Department's work, foster greater programmatic efficiency, and advance HUD's statutory purposes.

The preamble justifies proposing the 30-day notice rule, stating:

"HUD has general rulemaking authority under 42 U.S.C. 3535 to implement its statutory mission, which is to provide assistance for housing to promote 'the general welfare and security of the Nation and the health and living standards of [its] people...By taking the actions described here, HUD would prevent unnecessary evictions and the costs associated with those evictions for tenants, PHAs, and owners, as compelled by HUD's mission...These actions would promote the general welfare and security of the Nation by avoiding the societal costs and ills of housing instability brought on by evictions."

NLIHC urges HUD to apply the same reasoning to justify requiring PHAs and owners to enter into reasonable repayment agreements.

While justifying the proposed 30-day notice requirement, the preamble also refers to the value of reasonable repayment agreements:

"...PHAs and owners must work with tenants to recalculate rent and may make appropriate repayment plans which can make formal judicial eviction filings for non-payment of rent unnecessary."

"Even where households do not qualify for such measures, such as when the income reduction does not meet the threshold requirement for an interim reexamination or qualify for a hardship exemption in accordance with the multifamily housing owner's or PHA's ACOPs, Administrative Plans, or Tenant Selection Plans, as applicable, the family may still be able to arrange repayment plans that allow tenants to remain housed and make the PHA or owner whole, subject to PHA/owner discretion."

The preamble refers to how WinnCompanies, a manager of \$14 billion of affordable housing, used "longer-term, fee-free repayment plans to prevent formal judicial eviction filings and save money that otherwise would have been spent on costly eviction proceedings."

"It is generally more cost-efficient for housing providers to assist tenants in **curing** their non-payment of rent, for example by first providing notice as would be required by this rule, as opposed to evicting tenants for non-payment of rent." NLIHC emphasizes "curing" because a reasonable repayment plan might be the only way for a household to catch up on rent and avoid eviction.

5. We urge HUD to create a model repayment agreement using plain language that is easy for tenants to understand. The model repayment agreement should indicate:
  - i) The amount of back rent owed (and just “rent,” not arrearages charges, fines, and fees);
  - ii) The amount of current rent plus the portion of back rent owed to be paid per month.
  - iii) The total amount per month to be paid must not exceed 40% of a household’s adjusted income;
  - iv) Repayment agreements must not require lump sum repayments.
  - v) That when a household demonstrates that non-payment or incomplete payment of rent is due to insufficient income, the repayment plan is to be free of any other arrearages, such as late fees, as well as attorneys’ fees and administrative fees. Charging other arrearages, fees, and fees do not serve as an incentive for a household to pay rent when their income is inadequate – such charges are simply harmfully punitive.
  - vi) The anticipated time period of the repayment plan;
  - vii) The repayment agreement must be renegotiated and restructured if a household’s adjusted income decreases by 10% or more; and
  - viii) That a PHA or owner must suspend a repayment agreement for a set period of time if a household encounters difficulty making a payment, and the PHA or owner should establish quarterly check-ins with the household during the suspension period.

Many of these recommended elements of a model repayment plan are derived from Notice PIH 2018-18 and PIH’s COVID-19-era FAQs.

6. The text of each program’s regulations must require PHAs and/or owners to use HUD-created plain language templates that inform tenants of their right to an interim income recertification and that the subsequent rent adjustment must be applied retroactively.
7. The text of each program’s regulations must require PHAs and/or owners to use HUD-created plain language templates that inform tenants of the right to apply for a minimum rent hardship exemption, and that the PHA and/or owner may not evict a household for non-payment of the minimum rent during the 90-day period starting on the date the household requested a hardship exemption.
8. The text of each program’s regulations must clearly state a PHA’s and/or owner’s legal obligation to make information provided to tenants in accessible formats to ensure effective communication for people with disabilities and for people with limited English proficiency. Specifically, the text of the regulations must refer to the nondiscrimination requirements of Title VI of the “Civil Rights Act of 1964” and Section 504 of the “Rehabilitation Act of 1973.” In addition to the statutory references, the text of the regulation must require notices to be translated into the language spoken by the residents of a given assisted unit.

9. While the October 2021 interim final rule required PHAs and owners to inform residents about federal Emergency Rental Assistance, which is no longer available, NLIHC recommends the final rule require PHAs and owners to inform residents about any available state, local, or charitable rental assistance, anti-eviction resources, any right to counsel laws, and free legal assistance.
10. The proposed rule has a provision instructing the Secretary to tailor requirements and guidance in response to any future Presidentially declared national emergency. NLIHC strongly recommends the final rule add Presidentially declared disasters, which will occur far more frequently than national emergencies. NLIHC also recommends the final rule add text requiring the Secretary to tailor requirements and guidance responding to more localized emergency declarations declared by a governor or mayor in recognition of the increasing number of disasters due to human-caused climate change that do not rise to the level of a Presidentially declared disaster.

### **Slow Implementation of a Final Rule by HUD**

NLIHC is concerned about preventable evictions that might take place due to the anticipated slow implementation of the 30-day notice policy once a final rule is published on the *Federal Register*. First there is already a considerable time lag between January 30 when all comments are submitted, HUD's review of public comments, HUD's submission of a final rule to OIRA, completion of OIRA review and any pass back from HUD, and publication of a final rule. Added to that, the preamble anticipates that after a final rule is published there will be an additional 18 months for PHA compliance and 26 months for PBRA owner compliance. We question the necessity of so much time for PHAs to revise leases to incorporate the 30-day notice provision, or of HUD's Office of Multifamily Housing Programs to first devise a model lease for PBRA programs and for owners to secure revised leases. We urge that HUD expedite the implementation of the final rule to minimize the number of preventable evictions.

If you have any questions about our comments, please contact Ed Gramlich, Senior Advisor, [ed@nlihc.org](mailto:ed@nlihc.org), 202.662.1530 x 314.

Sincerely,



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President and CEO